

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

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Barry Diamond,

Plaintiff,

vs.

REPORT AND RECOMMENDATION

Jo Anne B. Barnhart,
Commissioner of Social
Security,

Defendant.

Civ. No. 06-1371 (JMR/RLE)

* * * * *

The above-entitled matter came before the undersigned United States Magistrate Judge upon routine supervision of cases filed in this District, and upon an assignment made in accordance with Title 28 U.S.C. §636(b)(1)(A).

This matter was initiated on April 7, 2006, by the filing of a Complaint with the Clerk of Court for the United States District Court for the District of Minnesota. By this action, the Plaintiff seeks judicial review of a determination of the Defendant which denied his application for Disability Insurance Benefits. On April 11, 2006, we granted the Plaintiff's Motion for Leave to Proceed without Payment of Fees. Docket No. 3.

On May 5, 2006, the Defendant filed a Motion to Dismiss for Failure to State a Claim. Docket No. 8. Specifically, the Defendant contends that the Plaintiff's filing of the Complaint is untimely, under Title 42 U.S.C. §405(g), which provides a sixty (60) day period in which an applicant can appeal an adverse decision of the Appeals Council to a Federal District Court. Accordingly, on July 6, 2006, we directed the Plaintiff to show cause, by no later than July 28, 2006, why the Defendant's Motion to Dismiss should not be granted. Docket No. 12.

To date, over two (2) months have passed since the Defendant filed her Motion to Dismiss, and twenty (20) days have passed since the date established in our Order of July 6, 2006, for the Plaintiff to respond. Since our Order, the Plaintiff has failed to file his response to the Defendant's Motion, or request an extension. Accordingly, we recommend that the Complaint be dismissed for failure to prosecute, and for failure to comply with our Order of July 6, 2006.

NOW, THEREFORE, It is --

RECOMMENDED:

That the Complaint be dismissed for failure to timely respond to our Order of July 6, 2006, and for failure to prosecute.

Dated: August 18, 2006

s/Raymond L. Erickson
Raymond L. Erickson
CHIEF U.S. MAGISTRATE JUDGE

NOTICE

Pursuant to Rule 6(a), Federal Rules of Civil Procedure, D. Minn. LR1.1(f), and D. Minn. LR72.1(c)(2), any party may object to this Report and Recommendation by filing with the Clerk of Court, and by serving upon all parties **by no later than September 5, 2006**, a writing which specifically identifies those portions of the Report to which objections are made and the bases of those objections. Failure to comply with this procedure shall operate as a forfeiture of the objecting party's right to seek review in the Court of Appeals.

If the consideration of the objections requires a review of a transcript of a Hearing, then the party making the objections shall timely order and file a complete transcript of that Hearing **by no later than September 5, 2006**, unless all interested

parties stipulate that the District Court is not required by Title 28 U.S.C. §636 to review the transcript in order to resolve all of the objections made.